

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS
Civil Action Number: 2005 CV 10488 JLA

TIMOTHY HILLS,)
)
Plaintiff)
)
)
vs.)
)
TOWN OF STOUGHTON,)
DAVID M. COHEN, Individually and)
MANUEL CACHOPA, Individually)

Defendants

JOINT MOTION TO EXTEND THE TRACKING ORDER

Now come the parties in the above-entitled action and move this court to amend the tracking order and extend the discovery deadline and reschedule the status conference from January 30, 2007 to a date after February 28, 2007 so that the parties may complete discovery on this file. As grounds for this motion, the defendants state that criminal charges are currently pending against the two defendants and the criminal trials are scheduled to begin on or about February, 2007.

Attached please find a memorandum in support of this motion.

/s/ Sarah F. Jubinville

Sarah F. Jubinville BBO 662 238
Colucci, Colucci, Marcus & Flavin, P.C.
552 Adams Street
Milton, MA 02186
(617) 698 02186
Attorney for Plaintiff

/s/ Miriam H. Gordon

John C. DeSimone, BBO 550 142
Miriam H. Gordon, BBO 653 997
Attorney for Manuel Cachopa
Mitchell & DeSimone
99 Summer Street
Boston, MA 02110
(617) 737-8300
(617) 737-8300

/s/ Charles D. Mulcahy

Charles D. Mulcahy, BBO 359 360
Wynn & Wynn
Attorney for Town of Stoughton
and Manuel Cachopa
90 New State Highway
Raynham, MA 02767
(508) 823-4567

/s/ John F. Gleavy

Stephen M.A. Woodworth, BBO 534 330
John F. Gleavy, BBO 636 888
Attorney for David M. Cohen
Lynch & Lynch
45 Bristol Drive
South Easton, MA 02375
(508) 230-2500

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**MEMORANDUM IN SUPPORT OF JOINT MOTION TO
EXTEND THE TRACKING ORDER**

Background

On December 9, 2004, the plaintiff filed a Verified Complaint in the Norfolk Superior Court naming the Town of Stoughton as a defendant and alleging civil rights violations, harassment, false imprisonment, infliction of emotional distress, assault, battery, invasion of privacy and deceit and fraud stemming from an incident that occurred in April 2002. The Town answered the complaint on March 16, 2005. On September 13, 2005, the plaintiff amended the complaint and named David Cohen and Manuel Cachopa, the Chief of Police for the Town of Stoughton. The amended complaint raises the same allegations against David Cohen as contained in the original complaint.

The Attorney General's office assigned a special prosecutor to investigate the allegations and David Cohen has been placed on paid suspension pending the investigation. David Cohen

has been criminally charged and a criminal case is pending. David Cohen's criminal trial is scheduled to begin in February 2007. Manuel Cachopa's criminal trial is also scheduled to begin in February 2007

In light of the criminal proceedings pending, this court recently issued a protective order prohibiting David Cohen and Manuel Cachopa from responding to discovery on this civil case. Also, the parties have agreed that the plaintiff need not respond to the individual defendants' discovery until resolution of the criminal matter.

Argument

The courts have recognized that the Fifth Amendment privilege against self-incrimination "applies alike to civil and criminal proceedings, whenever the answer might tend to subject to criminal responsibility him who gives it." McCarthy v. Arndstein, 266 U.S. 34, 40, 45 S. Ct. 16, 17, 69L. Ed. 158 (1924).

This court has further acknowledged the defendants' rights against self-incrimination by issuing a protective order so that neither David Cohen nor Manuel Cachopa are required to provide discovery in the present civil case until the criminal matter is resolved.

The parties rights to conduct discovery in the civil case should not, however, be hindered or precluded because of the underlying criminal matter.

In further support of this motion, the parties state the following:

1. Discovery in this matter has not been completed and has been stayed pending the resolution of the criminal case against Mr. Cohen and Mr. Cachopa;
2. The parties all assent to this motion;
3. No party will be prejudiced by the amendment to the tracking order.

Conclusion

The parties respectfully request that the tracking order to be amended and the discovery deadline be extended and a status conference be scheduled on a date after the criminal matters have concluded.

/s/ Sarah F. Jubinville

Sarah F. Jubinville BBO 662 238
Colucci, Colucci, Marcus & Flavin, P.C.
552 Adams Street
Milton, MA 02186
(617) 698 02186
Attorney for Plaintiff

/s/ Charles D. Mulcahy

Charles D. Mulcahy, BBO 359 360
Wynn & Wynn
Attorney for Town of Stoughton
and Manuel Cachopa
90 New State Highway
Raynham, MA 02767
(508) 823-4567

/s/ Miriam H. Gordon

Miriam H. Gordon, BBO 653997
Attorney for Manuel Cachopa
Mitchell & DeSimone
99 Summer Street
Boston, MA 02110
(617) 737-8300
(617) 737-8300

/s/ John F. Gleavy

Stephen M.A. Woodworth, BBO 534 330
John F. Gleavy, BBO 636 888
Lynch & Lynch
45 Bristol Drive
South Easton, MA 02375
(508) 230-2500

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants upon receipt of notification of same from the court.

/s/ John F. Gleavy

John F. Gleavy, BBO 636 888
Lynch & Lynch
45 Bristol Drive
South Easton, MA 02375
(508) 230-2500